Supreme Court of the United States

OCTOBER TERM, 1953

No. , Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS; STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

COMPLAINANT'S PETITION FOR REHEARING

We respectfully request a rehearing in these cases in which the Court has denied the motions of the complainant states, Alabama and Rhode Island, to file complaints against the defendant states, Texas, California, Florida and Louisiana, to restrain acts of the defendant states asserting power and authority over submerged lands and resources under the marginal seas in violation of the rights of the complainant states under the Constitution. We urge a rehearing on the following grounds:

I. The per curiam opinion in these cases assumes, without considering the meaning and effect of the particular statute in controversy, that the United States has given away its rights in the submerged lands under the marginal seas. The per curiam opinion in these cases constitutes an advisory opinion on hypothetical questions of law and fact involving basic state and federal relations, prejudicing but not adjudicating the actual cases and controversies presented by the complaints which this Court has denied leave to file and on which it has not heard argument on the merits.

On the hearing on the motion for leave to file, the complainant states confined their arguments to the right and standing of the complainants to sue and the justiciable character of the controversies presented by the complaints. The grave constitutional and legal issues involved were only sketched and outlined. The complainant states tried to impress upon the Court their right to a full hearing on these grave and far-reaching issues. They did not attempt to dispose of these issues in the time allowed for summary argument on motion for leave to file, as they did not believe that this Court would even wish to hear argument on the merits of the constitutional and statutory issues before the Court was satisfied as to the right and standing of the complainant states to sue. This was also the understanding of some if not all of the defendant states. In their printed objections to Alabama's motion for leave to file, the States of California and Florida expressly stated (p. 2):

"The following objections are presented jointly by California and Florida. These objections are directed solely to Alabama's (and Rhode Island's) motion for leave to file a complaint and are limited to jurisdictional arguments which make it 'plain that no relief may be granted in the exercise of the original jurisdiction of this Court.' *Georgia* v. *Pennsylvania R. Co.*, 324 U.S. 439, 445 (1945); *Arizona* v. *California*, 298 U.S. 558, 559 (1936). For that reason, no argument on the merits is being submitted at this time."

The suits brought by the complainant states raise issues not only of constitutional power but of the statutory exercise of constitutional power. They raise issues not only as to whether the acts of the defendant states complained of can be made lawful against the complainant states by an Act of Congress, but whether Public Act 31 by its terms does make these acts lawful. In paragraph XXXIII of the Rhode Island complaint and in paragraph XXXVII of the Alabama complaint, it is alleged that "Public Law 31, 83d Cong., 1st Sess., c. 65, should not be construed so as to authorize the * * * claims, assertions and actions of any of the defendant states described in this complaint."[1]

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[1] Counsel for Alabama alluded to this point in his oral argument. Transcript pp. 41-43. He stated: "In that connection, I would like to mention one thing that counsel for Rhode Island touched upon yesterday. He spoke of Section 5 of the Act. Section 5 specifically excepts from the operation of the Act, and I quote:

> 'All lands acquired by the United States by eminent domain proceedings, purchase, cession, gift or otherwise in a proprietary capacity.'

"Now, the presence of this provision in the statute places the defendants on the horns of a particularly disagreeable dilemma. The Attorney General of the United States, in his reply to Rhode Island's brief, argues that the off-shore areas formerly constituted the property of the United States, and for that reason, states the Attorney General of the United States, Public Law 31 represents a constitutional exercise of congressional power under the property clause.

"This argument rests wholely and exclusively on the concept which we have just been discussing, that the areas in question might be said to be property of the United States.

"But if, in fact, these areas are now held by the Court to constitute property of the United States, or if the nature of the interest of the United States is a proprietary interest, then by Section 5 of the Act, it is specifically provided that these areas didn't pass to the adjoining states by virtue of Public Law 31. In a nutshell, the defendants find themselves hoist on their own petard, and if their constitutional argument is sound, then the legislation which Congress enacted specifically provided that the areas which we are here discussing didn't pass to the adjoining states by virtue

It has not been the practice of this Court to deal with either constitutional power or the statutory exercise of constitutional power in the abstract. As Justice Frankfurter stated in *International Longshoremen's Union v. Boyd*, decided March 8, 1954, "Determination of the . . . constitutionality of legislation in advance of its immediate adverse effect in the context of a concrete case involves too remote and abstract an inquiry for the proper exercise of the judicial function."

In the instant cases there is involved not only the question of constitutional power but the nature of the constitutional power purported to be exercised by the Congress, whether the rights of the United States were sovereign or proprietary or both. The Court's conception of the nature of the constitutional power has a vital bearing, as we shall show, on the effect to be given to the particular statutory exercise of that power, and this the Court did not even touch upon in its *per curiam* opinion.

We respectfully submit that this Court should not deny the complainant states leave to file their complaints and at the same time render an advisory opinion on the constitutional power of Congress or the possible effects of an

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of Public Law 31, but were specifically excepted from the operation of the Act by Section 5 thereof."

Justice Burton: "Do you think that makes sense?"

Mr. Leva: "It would be a valid interpretation of the statute. It would make sense in that, I think, it is quite clear that Congress was trying to give away with one hand, and to say with the other, 'We are not really giving anything away.'

"Then, the net effect of the statute would be to confirm the title of the adjoining states to the tidelands, in the proper sense of that term—the area between low and high water (and the area under the inland waters). That would be the remaining effect of the statute on that interpretation.

"We think it is a conceivable statutory interpretation, and if you say that the property clause applies, you have got to go on, it seems to us, to the following and state Section 5 exempts anything that the U. S. owned in a proprietary capacity."

See also, Rhode Island's Reply Brief, p. 7, footnote 4.

Act of Congress. Such an advisory opinion necessarily prejudices and prejudges the rights of the parties on the basis of a partial and fragmentary consideration of the law and the facts which should govern the actual adjudication of the rights of the parties if leave to file the complaint were granted.

If the complainant states have standing and right to sue, which this Court does not deny, it is respectfully submitted that the Court should either exercise its jurisdiction and adjudicate the rights of the parties on a full consideration of the applicable facts and law, or it should in its discretion refuse to take jurisdiction. It would not wish to appear at one and the same time to refuse to let the complaints be filed and proceed without argument to render an advisory opinion on hypothetical questions which may seriously prejudice the rights of the parties which it has refused to adjudicate.

Certainly this Court would not wish to deliver an advisory opinion affecting vital incidents of the external sovereignty of the United States and basic relations between the states *inter sese* and between the states and the nation, and involving what might be the permanent and irrevocable surrender of invaluable and irreplaceable resources which this Court has held belonged to the United States. Such issues are determined by this Court only in an actual controversy of which it takes jurisdiction and only after adequate argument on the merits and full consideration of all the applicable facts and law.

It is peculiarly important in these times that the grave and far-reaching issues presented by these suits should not appear to have been summarily disposed of without adequate notice and full and fair hearing. *In these critical times, when procedural safeguards elsewhere are crumbling, the high standards of procedure maintained by this Court should not be dimmed or obscured.*

II. If, as this Court indicates in its per curiam opinion, the submerged lands under the marginal seas constitute property of the United States, the complainant states should be allowed to file their complaints, because the acts of the defendant states in asserting power over such property have not been validated or made lawful by Public Law 31, properly applied and interpreted.

The Court in its *per curiam* opinion explicitly confirms that the United States acquired the off-shore lands in a proprietary as well as a sovereign capacity. This explicit recognition of the title of the United States to the off-shore lands has a vital bearing on the meaning and effect of Public Law 31. Indeed, if that be the correct interpretation of this Court's action on March 15, it would appear that Public Law 31 is ineffective by its terms to transfer any of the off-shore oil resources, beyond the tidelands proper, to the defendant states.

This Court has hitherto been most cautious in its construction of grants of public property, whether to a state or person, and has not extended them further than the clear and explicit wording of the grants required. *Charles River Bridge* v. *Warren Bridge Co.*, 11 Pet. 420, 547-548; *United States* v. *Arredo*, 6 Pet. 691, 738; *Leavenworth* v. *L. & G. R. Co.*, 92 U.S. 733, 740; *St. Clair County Turnpike Co.* v. *Illinois*, 96 U.S. 63, 68; *Slidell* v. *Grandjean*, 111 U.S. 412, 438; *Wheeling & Belmont Bridge Co.* v. *Wheeling Bridge Co.*, 138 U.S. 287, 293; *Coosaw Mining Co.* v. *South Carolina*, 144 U.S. 550, 562; *Williams* v. *Wingo*, 177 U.S. 601, 603; *Larsen* v. *South Dakota*, 278 U.S. 429, 435; *Reichelderfer* v. *Quinn*, 287 U.S. 315, 321; *Great Northern R. Co.* v. *United States*, 315 U.S. 262, 272. As Justice Harlan said in *Coosaw Mining Co.* v. *South Carolina*, 144 U.S. 550, 562:

> "The doctrine is firmly established that only that which is granted in clear and explicit terms passes by a grant of property, franchises, or privileges in which the government or the public has an interest. Statutory grants of that character are to be construed strictly in favor of the public, and whatever is not unequivocally granted is withheld; nothing passes by mere implication. This principle, it has been said,

> [quoting Justice Field] 'is a wise one, as it serves to defeat any purpose concealed by the skilful use of terms to accomplish something not apparent on the face of the act, and thus sanctions only open dealing with legislative bodies.' *Slidell* v. *Grandjean*, 111 U.S. 412, 438."

This principle has peculiar force and cogency when the public grants, as those here involved, may place invaluable and irreplaceable resources beyond the power of future Congresses to recall. The principle also has peculiar force and cogency when it would enable a court, as here, to avoid adjudication of grave and serious constitutional questions affecting permanently basic relations between the states and the nation. As Mr. Justice Jackson remarked in a recent case, *United States* v. *Five Gambling Devices*, decided December 5, 1953:

> "The principle is old and deeply embedded in our jurisprudence that this Court will construe a statute in a manner that requires decision of serious constitutional questions only if the statutory language leaves no reasonable alternative. United States v. Rumely, 345 U.S. 41. This is not because we would avoid or postpone difficult decisions. The predominant consideration is that we should be sure Congress has intentionally put its power in issue by the legislation in question before we undertake a pronouncement which may have far-reaching consequences upon the powers of the Congress and the powers reserved to the several states. To withhold passing on an issue of power until we are certain it is knowingly precipitated will do no great injury, for Congress, once we have recognized the question, can make its purpose explicit and thereby necessitate or avoid decision of the question."

Does Public Law 31 by clear and explicit language give the defendant states the rights which they are claiming in the off-shore resources over which this Court had held the United States had paramount rights and full dominion? Whatever may have been the wishes or objectives of some of the proponents of Public Law 31, the language of the

statute neither clearly nor explicitly makes such grant. On the contrary, all lands acquired by the United States in a proprietary capacity were deliberately excluded from the act, obviously to allay legal and political fears regarding a "give-away" through the abdication to a few favored states of property belonging to all the United States.

Section 5 of Public Law 31 expressly excepts from the operation of Section 3, the section which purports to confirm and assign to the states title and ownership of the lands beneath navigable waters within their boundaries:

> "All lands acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary capacity."

This provision was added to Senate Joint Resolution 13 by the Senate Committee on Interior and Insular Affairs. The change made in the resolution as introduced in the Senate is shown by the following excerpt from the Committee's Report. (83d Congress, 1st Session, Senate, Report No. 133, p. 16). Deletions made by the Committee are indicated by a line through the type, additions made by the Committee are italicized.

> "Sec. 5. Exceptions From Operation of Section 3 of This (57) ~~Act~~ *Joint Resolution.*—There is excepted from the operation of section 3 of this (58) ~~Act~~ *Joint Resolution*—
>
> (a) all (59) ~~specifically described~~ tracts or parcels of land (60) ~~and~~ *together with all accretions thereto,* resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the (61) ~~decisions of the courts of such State, or their respective grantees, or successors in interest, by cession, grant, quitclaim, or condemnation, or from any other owner or owners thereof by conveyance or by condemnation, provided such owner or owners had lawfully acquired the title to such lands and resources in accordance with the statutes or decisions of the courts of the State in which the lands are located; and~~ *law of the State or of*

the United States, and all lands which the United States lawfully holds under the law of the State; all lands expressly retained by or ceded to the United States when the State entered the Union; all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift or otherwise in a proprietary capacity; all lands filled in, built up, or otherwise reclaimed by the United States for its own use; and any rights the United States has in lands presently and actually occupied by the United States under claim of right;"

The resolution, as originally introduced, excepted only lands which the United States had acquired from the States themselves or from persons who had good title under state law. The means of acquisition were limited to cession, grant, quitclaim, condemnation or conveyance. The committee amendments were not a mere restatement of the deleted language of the original. Specific language was introduced to cover lands which were filled in, built up, or otherwise reclaimed by the United States as well as lands actually occupied under claim of right. But the Committee did not stop there; it also added general language excepting all lands however acquired by the United States if acquired in a proprietary capacity.

In construing a public grant in abdication of national rights and national interests and involving the most serious questions of constitutional power, there is no reason for this Court to ignore or to narrow the clear and explicit exceptions incorporated in the statute even though the result is to defeat the objectives of some of the proponents of the legislation. The Congress enacted the statute and not the objectives of some of its proponents.

There is reason to believe that the Senatorial sponsors of Public Law 31 accepted the broad and unqualified exception in order to protect those who supported them from the charge that they were voting to give away property of the United States. While in the congressional debates there are casual references to the right of the Congress to dispose of property belonging to the United States, the sponsors

of the legislation were unwilling to concede that they were disposing of property belonging to the United States. They insisted that they were not giving away rights which belonged to the United States, but were recognizing rights which had always belonged to the States. They refused to recognize that there was a difference between the submerged lands under tideland and inland waters which this Court has held belongs to the States and the submerged lands under the marginal seas which this Court has held belong to the nation. As Senator Holland of Florida, one of the principal proponents of Public Law 31, stated, "this joint resolution will confirm to the maritime states the rights which they had respectively enjoyed since the founding of our Nation, and up to the date of the decision in the California case, in their offshore land and waters which lie within their constitutional boundary." (Congressional Record, Senate, April 7, 1953, p. 2848). As Senator Fulbright pointed out, "I have tried to make it clear—although I see that I have not made it clear to the Senator from Florida that the approach made by him and other proponents of the joint resolution is quite an incorrect one. If they would accept the decision of the Supreme Court in stating the law—in other words, if they would say, 'This is the decision of the Court, and this property belongs to the United States, that would be a different matter' • • • The trouble is that the Senator has never accepted the facts in the case. He has never recognized that these rights belong to the United States." (Congressional Record, Senate, April 21, 1953, p. 3613).

This the proponents of the legislation were not willing to do. They insisted that they were restoring and confirming rights that had always belonged to the states.

The Senate Committee's Report offers further evidence of the confusion on the part of the sponsors of Public Law 31, with respect to the nature of the national government's interest in the off-shore areas. Thus, the Committee Report states, in small print, that "the committee wishes to

emphasize that the exceptions . . . do not in any wise include any claim resting *solely* upon the doctrine of 'paramount rights' enunciated by the Supreme Court . . . " (83d Cong., 1st Sess., Senate Report No. 133, p. 20). (Emphasis added).

This passage makes it clear how serious was the Senatorial misunderstanding—or misstatement—of this Court's earlier rulings. For this Court had never enunciated a doctrine to the effect that the national government's "claim" rested "solely" on paramount rights. Indeed, in *United States* v. *California*, 332 U.S. 19, 34, this Court expressly stated that "acquisition . . . of the three mile belt [has] been accomplished by the national Government . . .". And the Court went on to say that, in addition to this "acquisition" of the three mile belt by the national government, "protection and control of it has been and is a function of national external sovereignty."

Moreover, it should also be noted that the language quoted above, from the Senate Committee's Report, is not consistent with the sweeping language of the exemptions as set out in the statute itself. It would change and not explain the statutory exception. It is for this Court and not vague and equivocal language in small print in a committee's report to determine whether the paramount rights of the United States in the offshore lands include property rights, thereby bringing those rights within the statutory exception.

But let us delve a little deeper into the origin of this statutory exception of all lands acquired by the United States in a proprietary capacity. In the course of the debates, Senator Cordon, the Chairman of the Senate Committee in charge of the bill, stated:

> "The Senator from Oregon only wants to say with reference to the exceptions set forth in the section (Section 5) that they were to a great extent urged and recommended by the Department of Justice, and approved by it, as affording ample protection for prop-

erties of the United States which should not be affected by this joint resolution." (Congressional Record, Senate, April 2, 1953, p. 2798)

An examination of the views of the Attorney General and Department of Justice at the Senate Committee's hearings on the bill leave no doubt that the language excepting all lands acquired by the United States in a proprietary capacity was intended by the Attorney General to except from the quitclaim the off-shore lands. (Hearings before Committee on Interior and Insular Affairs, U. S. Senate, 83d Congress, 1st Session on S. J. Res. 13, pp. 925-974). The Attorney General urged that the committee should draw a distinction between the submerged lands under inland waters, those under the marginal seas within the historic three mile limit and those beyond. He urged that "for the purpose of minimizing constitutional questions" the statute quitclaim or confirm the right of the states to the submerged lands under the inland waters, that it should not quitclaim the submerged lands within the historic three mile limit but merely authorize the states to administer and develop the lands within those limits, leaving the title with the federal government, and it should authorize the federal government to develop the lands beyond the historic three mile limit.

The Attorney General explained: "My recommendation would mean, in legal terms, that instead of granting to the states a blanket quitclaim title to the submerged lands within their historic boundaries, the Federal Government would grant to the states only such authority as required for the States to administer and develop the natural resources." (*ibid*, Hearings, p. 926)

In a colloquy with Senator Long and Senator Murray the Attorney General further and even more explicitly stated:

> Attorney General Brownell: "We believe that, so far as the off-shore submerged lands are concerned,

the Federal Government should have the entire title and dominion over the submerged lands.

Senator Long: "You feel that the states should have no interest in that.

Attorney General Brownell: "Only in whatever permissive way the Federal Government would give it to them; yes.

Senator Murray: "But the states would have no legal claim to it.

Attorney General Brownell: "That is correct. The title and control would be in the Federal Government.

Senator Murray: "Then the Federal Government could authorize the Interior Department to administer it.

Attorney General Brownell: "That is correct."
(*ibid*, Hearings, p. 941)

In light of this record there can be no doubt that the Department of Justice drafted the exceptions in section 5 with a view to including, in the exceptions from the quitclaim and assignment to the states, all off-shore lands. It may be conceded that the Department did not intend that the exception should extend to the limited authority which it had recommended be given to the states to *administer and develop* the natural resources in those lands, as distinguished from the quitclaim or transfer of title with respect to such lands. It may be conceded that some of the proponents of the legislation bungled, from their point of view, when they included the power to administer in the same section, section 3, as the quitclaim of title, and then made the Department of Justice's exceptions in section 5 applicable to the whole of section 3, the power to administer as well as the quitclaim.

But this bungling was purposeful. The proponents of the legislation deliberately hoisted themselves on their own petard. They did not agree with Attorney General Brownell that proprietorship or title to the off-shore lands were in the United States. In the Senate Hearings (*ibid*, Hearings, p. 183) this colloquy took place:

Senator Anderson: "The Supreme Court has three times said that these lands in the open ocean belong to the Federal Government.

Senator Daniel (a co-sponsor with Senator Holland of resolution 13 which became Public Law 31): "They have not once said that, Sir.

Senator Anderson: "Well, they have said that they do not belong to California, Texas and Louisiana.

Senator Daniel: "That is correct."

At other times, in the Senate hearings, Senator Daniel of Texas was even more specific in maintaining that the United States never had ownership of the off-shore lands. He stated, for example: "The Holland bill simply recognizes that the long-established good-faith claims of all of the 48 states and establishes, confirms and restores to every State in the Union the ownership and control of all this type of property within their respective historic boundaries. *It will not be a 'gift', because the Federal Government has never possessed or exercised any ownership of the property.*" (italics supplied).
(*ibid*, Hearings, p. 206)

Senator Daniel further stated:

> "*The Supreme Court did not hold that the Federal Government owns these lands.* It said in the California case that the needs and powers of the national sovereign are paramount 'bare legal title' and transcend the right of 'a mere property owner'; that such paramount government powers give the Federal Government the right to take and use property within the established boundaries of a state *without having ownership* or paying compensation." (italics supplied) (*ibid.*, Hearings, p. 231)

It is clear that the proponents of the legislation allowed Attorney General Brownell's exceptions to apply to all submerged lands, those under the marginal seas as well as those under the inland waters because they maintained, both for political and legal reasons, that the title to these lands was not in the United States.

If the exceptions in the Congressional enactment were broader than the proponents of the legislation intended, it is for the Congress and not for this Court to rewrite the statute.

This Court should be completely certain that the Congress itself has intentionally put its power in issue before it allows irreplaceable natural resources to be granted beyond the power of future Congresses to recall and before it undertakes to decide grave and serious constitutional issues involving what may be the irrevocable surrender of national responsibilities and national resources.

We respectfully submit therefore that if the lands under the marginal sea are, or were at the time of the enactment of Public Law 31, property of the United States, Public Law 31 is ineffective by its terms to make lawful the acts of the defendant states. By its terms all lands acquired by the United States in a proprietary capacity are excepted from its operations. Attorney General Brownell in his brief on behalf of the individual defendants in opposition to Rhode Island's motion for leave to file complaint not only does not deny but affirmatively maintains that the paramount rights of the United States in these off-shore lands include and do not exclude proprietary ownership (Brief, p. 19 ff). But he overlooks and never mentions the vitally important fact that all lands acquired by the United States in a proprietary capacity are excepted from the operation of Public Law 31.

The offshore lands are excepted from Public Law 31 because they were acquired by the United States in a proprietary capacity. It is now clear beyond doubt under the rulings of this Court that the United States acquired by purchase or cession in a proprietary as well as sovereign capacity the lands off the shores of Florida from Spain, the lands off the shores of Louisiana from France, the lands off the shores of California from Mexico, and the lands off the shores of Texas from Texas when Texas was admitted into the Union on equal footing with all other states.

If, therefore, the off-shore lands were the property of the United States before the enactment of Public Law 31, they remain the property of the United States under and by the terms of Public Law 31. The statute so construed may not have fulfilled all the desires of all of its proponents regarding the submerged lands under the marginal seas, but it does confirm the rights of all states to all the submerged lands between the high and low water-mark of the tides and under the inland waters. The proponents of the legislation had made much of the point that it was vitally important to all states to have removed an alleged cloud on their title to these submerged tideland and inland areas. See, for example, *ibid*, Hearings, p. 172 ff. It is not for this Court to rewrite a congressional statute to give away property of the United States which the statute by its terms excepts from its operation.

If this Court gives effect to the statutory exceptions, the Congress may, if it has the constitutional power, remove any or all of them. But if this Court ignores the particular statutory exception here in question, it casts doubt on the power of Congress to recapture the property of the United States except by purchase or eminent domain. If it ignores this statutory exception, this Court itself without a clear Congressional mandate becomes responsible for the give-away of invaluable property of the United States and the surrender of a vital part of its external sovereignty.

As Justice Cardozo has said:

> "A community whose judges would be willing to give it whatever law might gratify the impulse of the moment would find in the end that it had paid too high a price for relieving itself of the bother of awaiting a session of the Legislature and the enactment of a statute in accordance with established forms": (*Doyle* v. *Hofstader*, 257 N.Y. 244, 288.)

CONCLUSION

The *per curiam* opinion purports to deny leave to the complainant states to file their suits. But it does not stop there. It recognizes the right and standing of the complainant states to sue, and proceeds to hold, as both Rhode Island and the Attorney General of the United States have contended, that the paramount rights of the United States in the off-shore lands include title and proprietary ownership of those lands as well as sovereignty.

We submit that the Court should not leave these suits of such constitutional and practical import half-argued, half-decided, and in doubt as to just what has been decided. The Court should grant to the complainant states a hearing in order to determine whether the Act of Congress in controversy, which excepts from its operation all lands acquired by the United States in a proprietary capacity, does in fact surrender to a few favored states the off-shore lands the title and proprietary ownership of which is now expressly recognized by the Court to have always been in the United States.

For the reasons stated we respectfully request a rehearing so that the rights of the complainant states and other states may not be foreclosed or substantially prejudiced by an advisory opinion of this Court in suits which this Court has refused to hear on their merits. These suits involve not only the validity but the construction of a statute on which this Court should not speak without hearing the complainant states. Should a rehearing be granted we reserve our rights to seek to amend our complaints to clarify the issues which they are intended to raise, should such clarification be desirable. In the event a rehearing

is denied, we reserve the right to move the Court for leave to file a new complaint, presenting issues on which the Court has not heard the complainant states.

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Certificate of Counsel

We hereby certify that this petition for rehearing is presented in good faith and not for delay.

We further certify that a copy of this petition for rehearing has been served on all the parties of record by mailing a copy of same to them, postage prepaid.

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